

General Information Letter: Petition for permission to use separate accounting cannot be granted based only on a showing that separate accounting and formula apportionment produce different results.

July 10, 2012

Dear:

This is in response to your letter dated July 5, 2012, in which you request permission for Guardian Family Care, Inc. to use separate accounting for each office of the taxpayer, rather than the statutorily-mandated apportionment formula, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us). For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

We are requesting permission to use an alternative apportionment formula when computing our Illinois taxable income for form 1120 for the fiscal year ended 4-30-12. The apportionment methods available to us do not fairly and accurately reflect our business activity in Illinois.

Our corporation has three locations:

CITY1, STATE  
CITY2, STATE  
CITY3, Illinois

We keep a separate set of accounting records for each location. Attached is our Profit and Loss statement from year ended 4-30-12. As you can see, our Illinois location has a significant loss. For this reason we are requesting permission to use an alternative apportionment formula when computing our Illinois taxable income for form 1120 for the fiscal year ended 4-30-12.

### **Response**

Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;

(3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at [www.tax.illinois.gov](http://www.tax.illinois.gov). Merely showing a separate accounting statement, without any explanation of why the separate accounting is more accurate than formulary apportionment, is insufficient to meet the burden of proof imposed by that regulation on taxpayers requesting permission to use an alternative method of apportionment.

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. Your petition was filed July 5, 2012, and will allow the taxpayer to use the requested method on original returns due on or after November 2, 2012, if ultimately granted.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390. If you have any questions, you may contact me at (217) 524-3951.

Sincerely,

Paul S. Caselton  
Deputy General Counsel -- Income Tax